



November 19, 2002

Mr. Kuruvilla Oommen  
Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

OR2002-6587

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172361.

The Houston Police Department (the "department") received a written request for all correspondence between three named police officers during the past four years. You state that some of the responsive information will be released to the requestor. You contend, however, that the four remaining memoranda coming within the scope of the request are excepted from required disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that three of the memoranda you submitted to this office are made confidential under chapter 143 of the Local Government Code, which sets forth civil service rules for municipal fire and police departments. Subchapter G of that chapter contains provisions applicable to municipalities with a population of 1.5 million or more, including the City of Houston. See Open Records Decision No. 642 (1990). Section 143.1214(b) of the Local Government Code requires city police departments to withhold from disclosure "an investigatory document that relates to a disciplinary action against a . . . police officer that was overturned on appeal" and "any document in the possession of the department that relates to a charge of misconduct against a . . . police officer that the department did not sustain." You inform us that the memoranda you submitted to this office as Exhibits 2, 3, and 4 are the subjects of Internal Affairs Division investigations that are currently pending. We therefore conclude that the department must withhold these memoranda from the public pursuant to section 552.101 of the Government Code in conjunction with section 143.1214(b) of the Local Government Code.

You contend that the remaining memorandum you submitted to this office as Exhibit 5 is excepted from required public disclosure pursuant to section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You have submitted to this office an affidavit explaining how the release of Exhibit 5 would interfere with law enforcement. After reviewing the affidavit and the memorandum at issue, we conclude that you have met your burden of establishing the applicability of section 552.108(b)(1) in this instance. Accordingly, the department may withhold Exhibit 5 in its entirety pursuant to section 552.108(b)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

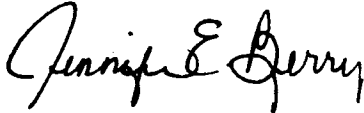
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/RWP/lmt

Ref: ID# 172361

Enc: Submitted documents

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P. O. Box 4260  
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(w/o enclosures)